



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 1626-99

17 July 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 20 June 1960 for four years as a PFC (E-2). At the time of your enlistment, you had completed months of active service in the Army Reserve.

The record reflects that you served without incident until 7 November 1960 when you were convicted by special court-martial of failure to obey a lawful order and discharging a firearm on post. You were sentenced to confinement at hard labor for four months, reduction in rank to PVT (E-1), and forfeitures of \$70 per month for four months.

On 1 June 1961 you were convicted by a second special court-martial of two periods of UA from 10 January to 9 March 1961 and 2-11 April 1961. You were sentenced to confinement at hard labor for six months, forfeitures of \$70 per month for six months, and a bad conduct discharge. However, on 22 August 1961 the supervisory authority disapproved the finding of UA from 10 January to 9 March 1961 and approved only so much of the sentence that provided for confinement at hard labor for two months and forfeitures of \$70 pay per month for two months.

You served without further incident until 2 November 1961 when you were convicted by general court-martial of disrespect towards an officer by urinating on the deck and saying "this is what I think of you and your diminished rations", disobedience of an officer's order, failure to obey an order of a corporal, possession of a concealed weapon, and two specifications of assault. You were sentenced to confinement at hard labor for 18 months, total forfeitures, and a bad conduct discharge. The Navy Board of Review affirmed the findings and the sentence on 18 December 1961. Thereafter, you waived the right to request restoration to duty and requested that the bad conduct discharge be executed. You received the bad conduct discharge on 17 April 1962.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, low test scores, and the fact that it has been more than 38 years since you were discharged. The Board concluded that the foregoing factors were insufficient to warrant recharacterization of your discharge given your convictions by two special courts-martial and a general court-martial. It appeared to the Board that you apparently failed to learn from your two special courts-martial convictions. You have provided neither probative evidence nor a convincing argument in support of your application. Trial by general court-martial was warranted by the gravity of the offenses charged. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director